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Thomas Spinelli, Esq. 14 Mystic Lane Northprot, NY 11768				WANG, TED M
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAHANGIR S. RASTEGAR and THOMAS SPINENI

Appeal 2009-004967
Application 10/633,846
Technology Center 2600

Before ELENI MANTIS MERCADER, CARL W. WHITEHEAD, JR., and
BRADLEY W. BAUMEISTER, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Final Rejection of claims 1-11. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

INVENTION

Appellants' claimed invention is directed to a low-detectability communication between a transmitter and a receiver. *See* Spec. 3. A modulator or transmitter 20 reads the signal 40 as a vector of ones and zeros from the workspace and encodes the signal onto the known pseudo-random key. White Gaussian noise is then added to the signal, and it is transmitted to the receiver 30 which demodulates the signal. *See generally* Spec. 8; Fig. 1.

Claim 1, reproduced below, is representative of the subject matter on appeal:

1. A method for low-detectability communication between a transmitter and receiver, the method comprising:
 - (a) transmitting first data from the transmitter according to at least one of a first timing, modulation, and frequency;
 - (b) appending the first data, prior to transmission, with information regarding at least one of a second timing, modulation, and frequency for a subsequent transmission; and
 - (c) transmitting second data from a transmitter according to the information.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Poon	US 6,192,070 B1	Feb. 20, 2001
Schuermann	US 6,198,764 B1	Mar. 6, 2001 (effectively filed Oct. 8, 1998)

Before the Federal Communications Commission, *Authorization of spread spectrum and other wideband emissions not presently provided for in the FCC Rules and Regulations*, FCC 84-169, 98 F.C.C.2d 380, Apr. 26, 1984 (hereinafter FCC publication).

The following rejections are before us for review:

1. The Examiner rejected claims 1-9 under 35 U.S.C. § 102(b) as being anticipated by Schuermann.
2. The Examiner rejected claims 10-11 under 35 U.S.C. § 103(a) as being anticipated by Schuermann in view of Poon.

ISSUE

The pivotal issue is whether the claims require and Schuermann teaches a “low-detectability” communication.

PRINCIPLES OF LAW

Although claims are interpreted in light of the specification, limitations from the specification are not read into the claims. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

Language in a claim preamble acts as a claim limitation only when it gives meaning to a claim and properly defines the invention and not merely when it states a purpose or intended use of the invention. *In re Paulsen*, 30 F.3d 1475, 1479 (Fed. Cir. 1994).

A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able

to stand alone. *See In re Hirao*, 535 F.2d 67 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152 (CCPA 1951).

ANALYSIS

Rejection of claims 1-9 under 35 U.S.C. § 102(b)

Appellants argue the distinctions between their invention as described in their Specification over the prior art of Schuermann (Br. 7-8). Specifically, Appellants describe that the actual data, according to their invention, is transmitted in bits and pieces at times determined by the pseudo random number generator which then can be decoded by the receiver that has the code (seed) to figure out the time sequence and use only the signal bits and pieces (pulse like) that are received at those times to reconstruct the data sequence (Br. 7). Appellants state that as discussed in their Specification, this is good for hiding the signal in the environmental noise, and preventing anyone from finding the transmitter (Br. 7).

Appellants argue that, contrary to their invention, Schuermann uses the pseudo noise (PN) code sequence to clean up the signal and get the original data which would make it easy to locate the transmitter which sends a continuous signal (Br. 7).

At the outset, we note that Appellants' recited distinctions over the prior art of using a pseudo random generator and the transmission of the actual data in bits and pieces are not claimed. Although claims are interpreted in light of the specification, limitations from the specification are not read into the claims (i.e., using a pseudo random generator and the transmission of the actual data in bits and pieces). *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

Appellants also argue that a method and a system having a transmitter and a receiver for “low-detectability” are not disclosed by Schuermann (Br. 7). We note that the feature of “low-detectability” is only recited in the preamble of independent claims 1, 7, 8, and 9, which is not accorded any patentable weight because it merely recites the purpose of a process or the intended use of a structure, and the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone (i.e., the feature of low-detectability is not positively recited in the body of the claims). *See In re Hirao*, 535 F.2d 67 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152 (CCPA 1951).

We also agree with the Examiner (Ans. 9-10), that Schuermann by teaching a “spread spectrum technique” for transmitting and receiving a signal teaches a “low detectability” signal as evidenced by the FCC publication (pg. 1, ¶ 2 (reciting that “spreading or dilution of the energy in spread spectrum systems over a wide bandwidth results in . . . low detectability”)). Appellants have not contested this evidence. Accordingly, even if the feature of “low-detectability” was positively recited in the body of the claim and not just the preamble, it would still not distinguish over Schuermann.

Accordingly, we will affirm the Examiner’s rejection of claims 1-9.

Rejection of claims 10-11 under 35 U.S.C. § 103(a)

We will also affirm the Examiner’s rejection of claims 10-11 under 35 U.S.C. § 103(a) for reasons similar to those stated *supra* as Appellants (Br. 8) have not advanced any other arguments with respect to these claim.

CONCLUSION

The claims do not require a “low-detectability” communication because it is only stated in the preamble of the independent claims and the body of the claims do not depend on the preamble for completeness. Regardless, Schuermann teaches a “low-detectability” communication.

ORDER

The decision of the Examiner to reject claims 1-11 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

Appeal 2009-011766
Application 10/548,665

AFFIRMED

ELD

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